

SENATE BILL No. 346

DIGEST OF INTRODUCED BILL

Citations Affected: IC 34-47; IC 35-38-2.

Synopsis: Child molesting. Provides that a repeat child molester may be placed on lifetime probation. Permits the court to hold a lifetime probationer who has violated a condition of a probation in contempt of court if the lifetime probationer has completed the underlying sentence. Permits a court to institute involuntary commitment proceedings against a lifetime probationer who has violated a condition of probation if the court believes that the probationer is mentally ill and dangerous. Makes conforming amendments.

Effective: July 1, 2004.

Waterman

January 12, 2004, read first time and referred to Committee on Criminal, Civil and Public Policy.

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Introduced

Second Regular Session 113th General Assembly (2004)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2003 Regular Session of the General Assembly.

SENATE BILL No. 346

A BILL FOR AN ACT to amend the Indiana Code concerning corrections.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 34-47-1-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 1. (a) Except as provided in ~~subsection~~ **subsections** (b) and (c), **IC 35-38-2**, and IC 34-47-3-8, IC 34-47-2 and IC 34-47-3 apply to all proceedings for contempt in all courts of record in Indiana except the supreme court.

(b) Nothing in IC 34-47-2 and IC 34-47-3 shall be construed or held to embrace, limit, or control any proceeding against any officer or party for contempt for the enforcement of civil rights and remedies.

(c) IC 34-47-2 and IC 34-47-3 do not apply to any case where any person has been personally served with notice to appear and testify as a witness in any court in Indiana in any civil or criminal case. A court may proceed against a person who fails to appear as a witness for contempt of court:

(1) by attachment; and

(2) as though IC 34-47-2 and IC 34-47-3 were not in force.

The proceeding against an absent witness by attachment shall not cause a continuance of the case in which the witness was subpoenaed to

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1 testify.

2 SECTION 2. IC 34-47-3-4.5 IS ADDED TO THE INDIANA CODE
3 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
4 1, 2004]: **Sec. 4.5. (a) This section applies only to a person on
5 lifetime probation.**

6 **(b) A person on lifetime probation who violates a condition of
7 the person's probation is guilty of an indirect contempt of the court
8 having supervision of the person.**

9 SECTION 3. IC 34-47-3-5 IS AMENDED TO READ AS
10 FOLLOWS [EFFECTIVE JULY 1, 2004]: **Sec. 5. (a) Except as
11 provided in subsection (e), in all cases of indirect contempts, the
12 person charged with indirect contempt is entitled:**

13 (1) before answering the charge; or

14 (2) being punished for the contempt;

15 to be served with a rule of the court against which the contempt was
16 alleged to have been committed.

17 (b) The rule to show cause must:

18 (1) clearly and distinctly set forth the facts that are alleged to
19 constitute the contempt;

20 (2) specify the time and place of the facts with reasonable
21 certainty, as to inform the defendant of the nature and
22 circumstances of the charge against the defendant; and

23 (3) specify a time and place at which the defendant is required to
24 show cause, in the court, why the defendant should not be
25 attached and punished for such contempt.

26 (c) The court shall, on proper showing, extend the time provided
27 under subsection (b)(3) to give the defendant a reasonable and just
28 opportunity to be purged of the contempt.

29 (d) A rule provided for under subsection (b) may not issue until the
30 facts alleged to constitute the contempt have been:

31 (1) brought to the knowledge of the court by an information; and

32 (2) duly verified by the oath of affirmation of some officers of the
33 court or other responsible person.

34 **(e) This section does not apply to a person on lifetime probation
35 (IC 35-38-2-2.7) alleged to be in contempt of court for violating a
36 condition of the person's probation.**

37 SECTION 4. IC 34-47-3-6 IS AMENDED TO READ AS
38 FOLLOWS [EFFECTIVE JULY 1, 2004]: **Sec. 6. (a) Except as
39 provided in subsection (e), if the defendant:**

40 (1) fails to appear in court at the time and place specified in the
41 rule provided for in section 5 of this chapter, to answer the rule;
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(2) appears in court, but fails or refuses to answer concerning the alleged contempt;
the court may proceed at once, and without any further delay, to attach and punish the defendant for contempt.

(b) If the defendant answers to the facts set forth in the rule by:

(1) showing that, even if the facts set forth are all true, they do not constitute a contempt of the court; or

(2) denying, ~~or~~ explaining, or confessing and avoiding the facts, so as to show that no contempt was intended;

the court shall acquit and discharge the defendant.

(c) If the defendant's answer to the rule does not sufficiently deny, explain, or avoid the facts set forth in the rule, so as to show that no contempt has been committed, the court may proceed to attach and punish the defendant for the contempt, by:

(1) fine;

(2) imprisonment; or

(3) both fine and imprisonment.

(d) A defendant who appeared to respond to the rule may appeal to the court of appeals in the same manner as in cases of direct contempt.

(e) This section does not apply to a person on lifetime probation (IC 35-38-2-2.7) alleged to be in contempt of court for violating a condition of the person's probation.

SECTION 5. IC 34-47-3-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 7. (a) Except as provided in subsection (b) **or (g)**, this section applies to all cases of indirect contempt of courts of this state, other than the supreme court or the court of appeals.

(b) This section does not apply to indirect contempts growing out of willfully resisting, hindering, delaying, or disobeying any lawful process or order of court.

(c) The court against which the alleged contempt was committed shall, at the time the rule to show cause is issued, nominate three (3) competent and disinterested persons, each of whom shall be an available judge or member of the Indiana bar, to be submitted to the parties in the action, from which the state, by the prosecuting attorney, and the defendant shall immediately strike off one (1) name each.

(d) The court shall appoint the person who remains unchallenged under subsection (c) to preside in the cause as special judge.

(e) If the prosecuting attorney, the defendant, or the defendant's attorney refuse to strike off the names under subsection (c), then the clerk of the court shall strike for them.

(f) If the person appointed under subsection (d) is an attorney and

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not a regular judge, and if that person consents to serve, the person shall be qualified as other judges. The person's appointment and oath shall be filed with the clerk and entered on the order book of the court. The appointed person may hear and determine the cause until the cause is disposed of.

(g) This section does not apply to a person on lifetime probation (IC 35-38-2-2.7) alleged to be in contempt of court for violating a condition of the person's probation.

SECTION 6. IC 35-38-2-1, AS AMENDED BY P.L.277-2003, SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 1. (a) Whenever it places a person on probation, the court shall:

- (1) specify in the record the conditions of the probation; ~~and~~
- (2) advise the person that if the person violates a condition of probation during the probationary period **(or during the person's life, if the person is serving lifetime probation)**, a petition to revoke probation may be filed before the earlier of the following:
 - (A) One (1) year after the termination of probation.
 - (B) Forty-five (45) days after the state receives notice of the violation; **and**

(3) advise a person on lifetime probation under section 2.7 of this chapter that the person may be found in contempt of court if the person violates a condition of probation.

(b) In addition, if the person was convicted of a felony and is placed on probation, the court shall order the person to pay to the probation department the user's fee prescribed under subsection (c). If the person was convicted of a misdemeanor, the court may order the person to pay the user's fee prescribed under subsection (d). The court may:

- (1) modify the conditions (except a fee payment may only be modified as provided in section 1.7(b) of this chapter); or
- (2) terminate the probation;

at any time. If the person commits an additional crime, the court may revoke the probation.

(c) If a clerk of a court collects a probation user's fee, the clerk:

- (1) may keep not more than three percent (3%) of the fee to defray the administrative costs of collecting the fee and shall deposit any fee kept under this subsection in the clerk's record perpetuation fund established under IC 33-19-6-1.5; and
- (2) if requested to do so by the county auditor, city fiscal officer, or town fiscal officer under clause (A), (B), or (C), transfer not more than three percent (3%) of the fee to the:

(A) county auditor, who shall deposit the money transferred

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under this subdivision into the county general fund;
 (B) city general fund when requested by the city fiscal officer;
 or
 (C) town general fund when requested by the town fiscal officer.

(d) In addition to any other conditions of probation, the court shall order each person convicted of a felony to pay:

- (1) not less than twenty-five dollars (\$25) nor more than one hundred dollars (\$100) as an initial probation user's fee;
- (2) a monthly probation user's fee of not less than fifteen dollars (\$15) nor more than thirty dollars (\$30) for each month that the person remains on probation;
- (3) the costs of the laboratory test or series of tests to detect and confirm the presence of the human immunodeficiency virus (HIV) antigen or antibodies to the human immunodeficiency virus (HIV) if such tests are required by the court under section 2.3 of this chapter;
- (4) an alcohol abuse deterrent fee and a medical fee set by the court under IC 9-30-9-8, if the court has referred the defendant to an alcohol abuse deterrent program; and
- (5) an administrative fee of one hundred dollars (\$100);

to either the probation department or the clerk.

(e) In addition to any other conditions of probation, the court may order each person convicted of a misdemeanor to pay:

- (1) not more than a fifty dollar (\$50) initial probation user's fee;
- (2) a monthly probation user's fee of not less than ten dollars (\$10) nor more than twenty dollars (\$20) for each month that the person remains on probation;
- (3) the costs of the laboratory test or series of tests to detect and confirm the presence of the human immunodeficiency virus (HIV) antigen or antibodies to the human immunodeficiency virus (HIV) if such tests are required by the court under section 2.3 of this chapter; and
- (4) an administrative fee of fifty dollars (\$50);

to either the probation department or the clerk.

(f) The probation department or clerk shall collect the administrative fees under subsections (d)(5) and (e)(4) before collecting any other fee under subsection (d) or (e). All money collected by the probation department or the clerk under this section shall be transferred to the county treasurer who shall deposit the money into the county supplemental adult probation services fund. The fiscal body of the county shall appropriate money from the county

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supplemental adult probation services fund:

(1) to the county, superior, circuit, or municipal court of the county that provides probation services to adults to supplement adult probation services; and

(2) to supplement the salaries of probation officers in accordance with the schedule adopted by the county fiscal body under IC 36-2-16.5.

(g) The probation department or clerk shall collect the administrative fee under subsection (e)(4) before collecting any other fee under subsection (e). All money collected by the probation department or the clerk of a city or town court under this section shall be transferred to the fiscal officer of the city or town for deposit into the local supplemental adult probation services fund. The fiscal body of the city or town shall appropriate money from the local supplemental adult probation services fund to the city or town court of the city or town for the court's use in providing probation services to adults or for the court's use for other purposes as may be appropriated by the fiscal body. Money may be appropriated under this subsection only to those city or town courts that have an adult probation services program. If a city or town court does not have such a program, the money collected by the probation department must be transferred and appropriated as provided under subsection (f).

(h) Except as provided in subsection (j), the county or local supplemental adult probation services fund may be used only to supplement probation services and to supplement salaries for probation officers. A supplemental probation services fund may not be used to replace other funding of probation services. Any money remaining in the fund at the end of the year does not revert to any other fund but continues in the county or local supplemental adult probation services fund.

(i) A person placed on probation for more than one (1) crime:

(1) may be required to pay more than one (1) initial probation user's fee; and

(2) may not be required to pay more than one (1) monthly probation user's fee per month;

to the probation department or the clerk.

(j) This subsection applies to a city or town located in a county having a population of more than one hundred eighty-two thousand seven hundred ninety (182,790) but less than two hundred thousand (200,000). Any money remaining in the local supplemental adult probation services fund at the end of the local fiscal year may be appropriated by the city or town fiscal body to the city or town court for

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use by the court for purposes determined by the fiscal body.

(k) In addition to other methods of payment allowed by law, a probation department may accept payment of fees required under this section and section 1.5 of this chapter by credit card (as defined in IC 14-11-1-7). The liability for payment is not discharged until the probation department receives payment or credit from the institution responsible for making the payment or credit.

(l) The probation department may contract with a bank or credit card vendor for acceptance of bank or credit cards. However, if there is a vendor transaction charge or discount fee, whether billed to the probation department or charged directly to the probation department's account, the probation department may collect a credit card service fee from the person using the bank or credit card. The fee collected under this subsection is a permitted additional charge to the money the probation department is required to collect under subsection (d) or (e).

(m) The probation department shall forward the credit card service fees collected under subsection (l) to the county treasurer or city or town fiscal officer in accordance with subsection (f) or (g). These funds may be used without appropriation to pay the transaction charge or discount fee charged by the bank or credit card vendor.

SECTION 7. IC 35-38-2-2.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: **Sec. 2.7. (a) As used in this section, "repeat child molester" means a person who has been convicted of child molesting (IC 35-42-4-3) and has a previous, unrelated conviction for child molesting, or a previous, unrelated conviction in another jurisdiction for a crime that is substantially similar to child molesting.**

(b) A court may place a repeat child molester on lifetime probation.

(c) In addition to any other condition of probation the court may impose under this chapter, the court shall require a repeat child molester serving lifetime probation under subsection (b) to meet at least monthly with a probation officer.

SECTION 8. IC 35-38-2-3.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: **Sec. 3.5. (a) This section applies only to a person on lifetime probation whose sentence may not be reimposed because the person has completed the underlying sentence.**

(b) The court may find a person in indirect contempt of court if:

(1) the person has violated a condition of probation; and

(2) the petition alleging a violation of probation is filed within

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forty-five (45) days after the state receives notice of the violation.

(c) When a petition charging a violation of a condition of probation is filed, the court may:

- (1) order a summons to be issued to the person to appear; or
- (2) order a warrant for the person's arrest if there is a risk of the person's fleeing the jurisdiction or causing harm to others.

(d) The court shall conduct a hearing concerning the alleged violation. The court may admit the person to bail pending the hearing.

(e) The state must prove the violation by a preponderance of the evidence. The evidence shall be presented in open court. The person is entitled to confrontation, cross-examination, and representation by counsel.

(f) A person may not be found in indirect contempt of court for failure to comply with conditions of a sentence that imposes financial obligations on the person unless the person recklessly, knowingly, or intentionally fails to pay.

(g) If the court finds that the person has violated a condition of probation, the court may do either or both of the following:

- (1) Continue the person on probation, with or without modifying or enlarging the conditions.
- (2) Find the person in indirect contempt of court.

(h) If the court finds that the person has violated a condition of probation, the court may do either or both of the following:

- (1) Hold a hearing in accordance with IC 35-38-1-7.5 to determine whether the person is a sexually violent predator (as defined in IC 5-2-12-4.5).
- (2) Initiate commitment proceedings under IC 12-26 if the court believes that the person may be:

- (A) mentally ill; and
- (B) dangerous.

(i) A judgment finding a person in indirect contempt of court for violating a condition of the person's probation is a final appealable order.

(j) Failure to pay fines or costs required as a condition of probation may not be the sole basis for ordering a person to be incarcerated.

(k) Failure to pay fees or costs assessed against a person under IC 33-9-11.5-6, IC 33-19-2-3(c), or IC 35-33-7-6 is not grounds for holding a person in indirect contempt of court unless the failure to pay was reckless, knowing, or intentional.

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